

O. Refugees/52  
File No.

1952.



Legal Deptt.

A BRANCH

p5(e)

Subject:— Opinions under the Bombay  
Refugees Act, 1948.

File No. O. Refugees/52

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C O N T E N T S.

Legal Department File No. O. Refugees/52

| Sr.<br>No. | R.I./<br>O.No.                 | Subject                                                                                                                                                                                                                                                                                                                                                                     | pages |
|------------|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
|            |                                | Opinions under the Bombay<br>Refugees Act, 1948.                                                                                                                                                                                                                                                                                                                            |       |
| 1.         | <u>11722</u><br><u>15-7-52</u> | Bombay Refugees Act<br>1948-section 7---<br>Notice of suit by Mr.<br>Pharwani.                                                                                                                                                                                                                                                                                              | 1-3   |
| 2.         | <u>13823</u><br><u>23-8-52</u> | Whether in view of the<br>delegation of powers under<br>section 7 of the Refugees Act<br>1948 to the Director of Rehabilitation<br>and the Collectors, Govt. can<br>exercise those powers independently<br>in suitable cases; and<br>whether Government can set aside<br>or modify the orders made<br>under section 7 by the Director of<br>Rehabilitation of the Collector | 5.    |

L.R.D.  
1-8-56  
C.4

Office of the R.L.A.

Bombay Refugees Act,  
1948. sec. 7  
Notice of  
suit by  
Dr. Pherwani.

On going through the whole correspondence underlying the offer and counter-offer at various stages made by Government and the Sough Deolali township Co-operative Housing Society, it appears clear that at no stage was there a concluded agreement between the parties. Consequently Dr. Pherwani's threat of action on the ground that there was a concluded agreement is without substance. The suit, if filed will be defensible.

2. Dr. Pherwani seems to be contending that since the Collector has claimed rent from the displaced persons, the action taken by him under section 7 of the Bombay Refugees Act, 1948 is not tenable. The order passed by the collector under section 7 of the Bombay Refugees Act, 1942, as it stands, seems to be free from any defect. There is no reference in that order about the payment of rent nor is there any indication in that order to show that these refugees were occupying the premises on payment of rent. However, in the letter addressed by the Collector to Dr. Pherwani on 13th June 1952, it is clearly stated that the displaced persons who were asked to vacate the premises were liable to pay Rs.44,135,-15-0 on account of rent, water and electricity charges. The liability to pay water and electricity charge does not indicate any relationship of landlord and tenant and the displaced persons occupying the premises could not escape the liability to pay the service charges. But the payment of rent does indicate some kind of relationship of landlord and tenant between the parties, in which case eviction from leased premises save through court would not be lawful. It is not understood, in the present case, whether the rent demanded was fixed between the parties or it is only intended to recover by way of compensation for reimbursement of the

compensation which is required to be paid by Govern  
to owners of the requisitioned land. If this is the position  
position, there would be no question of any relationship  
of landlord and tenant and the order under section 7 of  
the Bombay Refugees Act would be valid and enforceable.  
Even so the Department will no doubt consider the  
question of finding alternative accommodation.

Sd/-  
15-7

Remembrancer of Legal Affairs.

U.R. to R.H.D. No 11722, dated the 15th July 1952.

M.R.D.  
19-6-56  
C.4

Office of the R.L.A.

The two questions referred to R.L.A. are:-

(1) whether in view of the delegation of powers under section 7 of the Refugees Act, 1948, to the Director of Rehabilitation and the Collectors Government can exercise those powers independently in suitable cases; and

(2) whether Government can set aside or modify the orders made under section 7 by the Director of Rehabilitation or the Collectors.

2. The view taken by the Secretary, Rehabilitation Department on the first question is correct. By Government Notification No.R-133-I-B dated the 6th June 1949, Government have delegated their powers to the officers specified in the notification. "To 'delegate' to another, is not to denude yourself. 'In my opinion the word, in its general sense and as generally used, does not imply or point to, a giving up of authority, but rather the conferring of authority upon some one else' (per Wills J., Huth Vs, Clarke, 25Q.B.D.P. 391)": See Lyer's Law Lexicon, p.310. Delegation of powers to the Directors of Rehabilitation and the Collectors would not, therefore, deprive Government of their powers under section 7 and it would be open to Government to exercise the powers in suitable cases.

3. As regards the second question, it appears that Government would have no appellate or revisional powers against the orders passed by the Director of Rehabilitation or the Collectors. The delegation to these officers is unconditional and so long as they act within the scope of their authority, their action would be binding on Government. Had the delegation been subject to the general or special orders of Government it would have been possible for Government to revise, modify or annul the acts of the delegate; but so long as the delegation is unconditional no such action would be possible.

Sd/22/8

Remembrancer of Leg.

U.R. to Rehabilitation Department, No. 13823

dated the 23rd August 1952.

M.R.D.

19-6-56  
U.4